



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii; Danger Zone

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend an existing danger zone in waters of the Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii. The U.S. Navy conducts missile defense activities, test missile launches, and training activities at the Pacific Missile Range Facility. The proposed amendment is necessary to protect the public from hazards associated with missile launch operations, training activities, and increased threat conditions. The proposed amendment would expand the existing danger zone and would prohibit any activity by the public within the danger zone without first obtaining permission from the Commanding Officer, Pacific Missile Range Facility, to ensure public safety and/or installation good order during range operations, weapon system testing, training activities, increases in force protection and other mission essential evolutions. The expanded danger zone would extend along approximately seven miles of shoreline adjacent to the Pacific Missile Range Facility, with its seaward extent ranging between 2.96 and 4.16 nautical miles offshore.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2013-0007, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil . Include the docket number, COE-2013-0007 , in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2013-0007 . All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov> , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the

public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov . All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Mr. Farley Watanabe, Corps of Engineers, Honolulu District, Regulatory Branch, at 808-835-4305 or by e-mail at farley.k.watanabe@usace.army.mil.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to amend the danger zone in waters of the Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii by increasing the water area historically noted on nautical charts as 334.1390.

The Corps authority to amend this danger zone is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3).

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing to amend the regulations at 33 CFR Part 334 by amending the existing permanent danger zone in the waters of the Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii.

The U.S. Navy conducts missile defense activities, test missile launches, and training activities at the Pacific Missile Range Facility. The proposed amendment is necessary to protect the public from hazards associated with missile launch operations, training activities, and increased threat conditions. The proposed amendment would expand the existing danger zone and would prohibit any activity by the public within the danger zone without first obtaining permission from the Commanding Officer, Pacific Missile Range Facility, to ensure public safety and/or installation good order during range operations, weapon system testing, training activities, increases in force protection and other mission essential evolutions. The expanded danger zone would extend along approximately seven miles of shoreline adjacent to the Pacific Missile Range Facility, with its seaward extent ranging between 2.96 and 4.16 nautical miles offshore.

Procedural Requirements

a. Review under Executive Order 12866.

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

This proposed rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the amendment of this danger zone would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.1390 to read as follows:

§ 334.1390 Pacific Ocean off the Pacific Missile Range Facility at Barking Sands, Island of Kauai, Hawaii; danger zone.

(a) The danger zone. All navigable waters within an area beginning at a point on the shore at latitude 22°04'13.65"N, longitude 159°46'30.76"W; and continue south along the shoreline to latitude 21°58'42.77"N, and longitude 159°45'26.35"W. Thence extending southwest to latitude 21°56'6.00"N, and longitude 159°46'55.91"W extending northwest to latitude 21°58'59.81"N and longitude 159°50'51.42"W, continuing north to latitude 22° 02'28.09"N, and longitude 159°51'28.15"W, and continuing northeast to latitude 22° 06' 30.71" N, longitude 159°49'20.43" W; and thence to point of beginning. All coordinates reference 1983 North American Datum (NAD 83).

(b) The regulations. (1) Dredging, dragging, seining, and other similar operations within the danger zone are prohibited.

(2) All persons, boats, vessels, or other craft are prohibited from entering, transiting, or remaining within the danger zone during range operations, test and training activities, or increases in force protection that pose a hazard to the general public, as determined by the enforcing agency. The enforcing agency's determination of the necessity of closing the danger zone due to increases in force protection will be based on the Department of Defense Force Protection Condition (FPCON) System. From the lowest security level to the highest, FPCON levels are titled Normal, Alpha, Bravo, Charlie and Delta.

(3) Closure of the danger zone will be indicated by Notice to Mariners, the presence of Pacific Missile Range Facility range boats, beach markings including beach signs along the north and south beach borders alerting shoreline foot traffic, security patrols, and radio transmissions on common ocean frequencies to include Marine band channel 6 (156.300 MHz), Marine band channel 16 (156.800 MHz), and CB channel 22. The enforcing agency will post the danger zone closure schedule on its official Navy website, <http://www.cnmc.navy.mil/PMRF/>, and Facebook website, <http://www.facebook.com/PacificMissileRangeFacility>. The danger zone closure schedule may also be obtained by calling the following phone numbers: 808-335-4301, 808-335-4388, and 808-335-4523.

(4) The enforcing agency will authorize the use of some, or all, of the danger zone for civilian waterborne activities when mission-essential evolutions such as range

operations, test and training operations, or increases in force protections levels permit it. Such activities include fishing, sightseeing, shelling, surfing, and transit.

(c) The enforcing agency. The regulations in this section shall be enforced by the Commanding Officer, Pacific Missile Range Facility, Hawaii and such agencies or persons as he or she may designate.

Dated: June 24, 2013. _____

Approved:

James R. Hannon

Chief, Operations and Regulatory

Directorate of Civil Works

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